IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO.35074 of 1997

Between:

A.S.Khan, S/o.Abdhul Shukur Khan, 43 years, Constable, CISF Group, Balanagar, Hyderabad.

...PETITIONER

AND

1. The Group Commandant, CISF, CISF Group Head Quarter, Building No.2-128/1, Road No.4, Sobhana Colony, Balanagar, Hyderabad – 500 042.
2. The Deputy Inspector General, CISF, Southern Zone, Ministry of Home Affairs, Rajaji Bhavan, Besant Nagar, Chennai – 600 090.
3. The Director General, CISF, Lodi Estate, New Delhi – 110 003.
4. Government of India, Ministry of Home Affairs, represented by its Secretary, New Delhi – 110 011.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction, more particularly one in the nature of Writ of Certiorari and quash the order No.V-15014/AP IV MAJ/DP-01/ASK/97/216, dated 09.01.1997 of the first respondent, disciplinary authority confirmed by second respondent, appellate authority by order dated 21.07.1997, by declaring the same as illegal, mala fide, not based on evidence, unconstitutional and violative of Articles 14, 16 and 21 of the Constitution of India, violative of the principles of natural justice and also violative of Fundamental Rules No.54, 54-A & 54-B and consequently

direct the respondents herein to restore the pay of the petitioner as on 30.09.1991, granting further increments and all other attendant benefits and allow the petitioner full wages for the period from 30.09.1991 to 05.01.1997 treating the suspension period as on duty and allow him all the attendant benefits such as increments etc.

Counsel for the Petitioner: MR.S.A.CHARI

Counsel for the Respondents: MR.A.AJAY KUMAR

The Court made the following:

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THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.35074 OF 1997

ORDER:

This Writ Petition is filed seeking a Writ of Certiorari to quash the proceedings dated 09.01.1997 of the first respondent as confirmed by the second respondent in his proceedings dated 21.07.1997, as arbitrary and illegal.

The petitioner while working as Constable, Central Industrial Security Force (for short 'CISF') at Paloncha, Khammam District was suspended from service on 01.02.1991 and a charge sheet dated 09.01.1991 was issued on 20.01.1991 with the following charges.

a. Grave indiscipline, misconduct and dereliction of duty on the part of No.723100052 Constable A.S.Khan formerly of CISF Unit SIIL (P) in that he was found absent from the evening roll call parade on 30.01.1991.

b. Grave indiscipline, misconduct and dereliction of duty on the part of No.723100052 Constable A.S.Khan formerly of CISF Unit SIIL (P) in that he was absent from "C" shift duty commencing from 21.00 hrs of 30.01.1991 to 05.00 hrs on 31.01.1991.

c. Gross misconduct, indiscipline and moral turpitude on the part of No.723100052 Constable A.S.Khan formerly of CISF Unit SIIL (P) in that he created nuisance in NAVABHARAT AUDITORIUM, Polancha on 30.01.1991 at about 20.30 hrs and misbehaved with a Lambadi lady as reported by General Manager, Nava Bharat, Ferro Alloys Ltd., Polancha vide their letter No.Estt/9526/90-91, dated 31.01.1991.

After conducting a detailed enquiry, he was dismissed from service by an order dated 30.09.1991. Aggrieved by the same, the petitioner filed Writ Petition No.13413

of 1993 before this Court. This Court by an order dated 19.12.1995 quashed the dismissal order passed by the first respondent as confirmed by the second respondent. Aggrieved by the same, the respondents filed Writ Appeal No.192 of 1996 before a Division Bench of this Court. The Writ appeal was dismissed on 12.03.1996 with an observation that since the petitioner was charged with commission of one misconduct which was a moral turpitude, quashing of the enquiry and punishment orders does not amount to final exoneration from the charges, the first respondent was directed to conduct fresh enquiry and pass appropriate orders. Thereupon, a detailed enquiry was conducted and the final order was passed on 09.01.1997 imposing a punishment of reduction in pay scale from Rs.960/- to Rs.940/- for a period of one year without cumulative effect. Further, it was directed that the petitioner shall earn increments of pay during the period of reduction and that on expiry of the period, the reduction will not have the effect of postponing his future increments of pay. However, the intervening period from the date of dismissal to the date of reinstatement (i.e. from 30.09.1991 to 26.05.1996) be treated as EOL without Medical Certificate. Further, the period of suspension from 27.05.1996 to 05.01.1997 be treated as such and the petitioner will not get anything more than the subsistence allowance already paid to him. Aggrieved by this, the petitioner filed an appeal before the Deputy Inspector General, Central Industrial Security Force (Ministry of Home Affairs), Besant Nagar, Chennai. The appellate authority after considering the order passed by the disciplinary authority and after appreciation of the facts and circumstances of the case, confirmed the orders passed by the disciplinary authority and rejected the appeal. Aggrieved by the same, the present Writ Petition is filed.

As seen from the above, the punishment imposed on the petitioner was only a minor punishment, that is, reduction of pay scale from Rs.960/- to Rs.940/- for a period of one year without cumulative effect. Further, the period from 30.09.1991 to

26.05.1996 was directed to be treated as EOL and the period of suspension after the first Writ Petition, i.e. from 27.05.1996 to 05.01.1997 was treated as such.

A detailed counter-affidavit has been filed denying the allegations made by the petitioner asserting that the petitioner is not entitled for any relief as sought in the Writ Petition and the Writ Petition is liable to be dismissed.

Heard both sides.

Learned counsel for the petitioner submits that the petitioner was suspended earlier under Rule 30 (1) of CISF Rules, 1969. Therefore, the period of suspension must be regulated as per the instructions issued by the authorities i.e., whenever a minor punishment is given, the suspension period should be treated as on duty and the employee is entitled for all the wages. Rule 30 (1) of CISF Rules, 1969 reads as under.

30. Suspension: (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President by general or special order, may place a member of the Force under suspension-

a. where a disciplinary proceeding against him is contemplated or is pending; or

b. where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.

It is an undisputed fact that when the petitioner was suspended from service initially, he was involved in a criminal case and he was arrested by the local police and was under lockup for more than 48 hours. As seen from the above, Rule 30 (1) (b) of CISF Rules, 1969 enables the authorities to suspend the petitioner from service. Such suspension was continued at least upto 27.05.1996 when the third charge was dropped, in view of the fact that the petitioner was held not guilty of the offence by the Judicial First Class Magistrate, Kothagudem. In the meanwhile, he filed a Writ

Petition before this Court as stated above and the Writ Petition was allowed and the authorities were directed to take fresh proceedings. Therefore, he was again treated as under suspension with effect from 27.05.1996 till the proceedings were concluded in the impugned proceedings dated 09.01.1997. Therefore, the learned counsel for the petitioner submits that at least the period for which he was suspended on the basis of the two charges (a) and (b) above, since the third charge was dropped in view of his acquittal by the criminal court, he is entitled for full wages since the final order passed is only a minor punishment of stoppage of one increment without cumulative effect. Further, inasmuch as no show cause notice was issued, proposing to treat the period of suspension right from 30.09.1991 to 26.05.1996 and also from 27.05.1996 to 05.01.1997, the final order passed by the authorities without putting the petitioner on notice, is bad in law and violative of principles of natural justice.

Learned counsel for the respondents contends that the petitioner is not entitled for any relief as prayed for. The respondents have taken a decision and viewed the matter very leniently. As such, this Court cannot interfere into the order passed by the authorities.

I am in full agreement with the submissions made by the learned counsel for the petitioner that the final decision taken by the respondent is only a minor punishment, imposing reduction in pay scale from Rs.960/- to Rs.940/- without any cumulative effect. The punishment of reduction in pay scale without cumulative effect is definitely a minor punishment. Once this is the position, the authorities were supposed to take a decision as per Administrative Instructions (3) in the F.R.54-B which reads as under.

(3) Period of Suspension to be treated as duty if minor penalty only is imposed: Reference is invited to O.M.No.43/56/64-AVD, dated 22.10.1964 (not printed), containing the guidelines for placing Government servants under suspension and to say that these instructions lay down, *inter alia*, that Government servant could be placed under suspension if a *prima facie* case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory

retirement. These instructions thus make it clear that suspension should be resorted to only in those cases where a major penalty is likely to be imposed on conclusion of the proceedings and not a minor penalty. The Staff Side of the Committee of the National council set up to review the CCS (CCA) Rules, 1965, had suggested that in cases where a Government servant, against whom an inquiry has been held for the imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances paid for suspension period. Government have accepted this suggestion of the Staff Side. Accordingly, where departmental proceedings against a suspended employee for the imposition of a major penalty finally end with the imposition of a minor penalty, the suspension can be said to be wholly unjustified in terms of F.R.54-B and the employee concerned should, therefore, be paid full pay and allowances for the period of suspension by passing a suitable order under F.R.54-B.

I am of the opinion that so far as the period from 27.05.1996 to 05.01.1997 is concerned, this is a period for which the petitioner was suspended purely for the charge of violation of the Departmental orders or indiscipline in the Department. Therefore, once a minor punishment was imposed as per the above instructions, the petitioner is entitled for full wages for the said period. Insofar as the period from 30.09.1991 to 26.05.1996 is concerned, since the petitioner was suspended mainly on the ground that he was involved in a criminal case involving moral turpitude. The said period needs to be regulated by the authorities after giving a show cause notice and calling for explanation from the petitioner as per F.R.54-A. Therefore, I am of the view that the disciplinary authority/competent authority, under the Service Regulations of the CISF, may regulate the period from 30.09.1991 to 26.05.1996 as per Rules, after issuing a show cause notice.

For the reasons as stated above, the impugned order dated 09.01.1997 as confirmed by the appellate authority on 21.03.1997 is set aside to the extent of treating the period of suspension from 30.09.1991 to 26.05.1996 as EOL without Medical Certificate. For rest of the period from 27.05.1996 to 05.01.1997, the petitioner is entitled for back wages etc., as indicated above. The punishment of reduction in pay scale is confirmed.

The Writ Petition is allowed to the extent indicated above. No costs.

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(C.V.RAMULU, J)

4th October 2004

RRB

That Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday, the fourth day of October 2004.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Group Commandant, CISF, CISF Group Head Quarter, Building No.2-128/1, Road No.4, Sobhana Colony, Balanagar, Hyderabad – 500 042.

2. The Deputy Inspector General, CISF, Southern Zone, Ministry of Home Affairs, Rajaji Bhavan, Besant Nagar, Chennai – 600 090.

3. The Director General, CISF, Lodi Estate, New Delhi – 110 003.

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5. Two CD copies.